

Hearing Date: December 16, 2008 at 10:00 a.m.

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	Chapter 11 Case No.
	:	
LEHMAN BROTHERS HOLDINGS INC., <u>et al.</u> ,	:	08-13555 (JMP)
	:	
Debtors.	:	(Jointly Administered)
	:	
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**STATEMENT OF OFFICIAL COMMITTEE OF UNSECURED
CREDITORS IN SUPPORT OF DEBTORS' MOTION FOR AN ORDER
PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE APPROVING
THE ASSUMPTION OR REJECTION OF OPEN TRADE CONFIRMATIONS**

The Official Committee of Unsecured Creditors (the "Committee") appointed in the chapter 11 cases of Lehman Brothers Holdings Inc. ("LBHI") and its affiliated debtors in possession hereby files this statement (the "Statement") in support of the motion, dated November 14, 2008 (the "Open Trades Motion"), of LBHI and Lehman Commercial Paper Inc. ("LCPI," and together with LBHI, the "Debtors") for an order (i) authorizing the Debtors to assume, reject or modify certain pending trade agreements (the "Open Trade Confirmations") entered into with certain counterparties (the "Counterparties"), and (ii) determining that the Counterparties do not have the right to set off rejection damages claims against payments due by

such Counterparties on account of assumed Open Trade Confirmations [Docket No. 1541]. In support of the Open Trades Motion, the Committee respectfully states as follows:

STATEMENT

1. The Committee supports the relief requested in the Open Trades Motion because the proposed treatment of the Open Trade Confirmations, each of which the Debtors assert is an executory contract, will maximize recovery for the benefit of unsecured creditors.¹ After the Open Trades Motion was filed, immediately upon being granted access to the Debtors' professionals and the relevant information, the Committee's advisors analyzed the Open Trade Confirmations and engaged in extensive discussions with the Debtors regarding their determinations. The Committee's advisors have also been working cooperatively with the Debtors to resolve objections to the Open Trades Motion.

2. As set forth in the Open Trades Motion, because the Assumed Trades consist mostly of sell-position trades that were agreed upon at a time when market conditions were more favorable than they are today, the estates will realize significant value from the assumption of these agreements. The Debtors propose to reject most of their buy-position trades, which will relieve the estates of their obligation to purchase devalued loan interests. The Committee is satisfied that the Debtors exercised sound business judgment in connection with

¹ The Open Trades Motion was filed in compliance with (1) a stipulation and agreed order, dated October 31, 2008 (the "First Stipulation"), among the Debtors and certain Counterparties, resolving such Counterparties' motion, dated October 17, 2008, seeking to compel LCPI to assume or reject certain Open Trade Confirmations by November 7, 2008, and (2) a revised stipulation, entered November 5, 2008 (the "Second Stipulation," and together with the First Stipulation, the "Stipulations"), which extended the deadlines for the Debtors to notify the Counterparties, and to file a notice with the Court for approval, of the proposed treatment of 49 specific Open Trade Confirmations. The Stipulations provided that, "[a]fter consultation with professionals retained by the [Committee]," the Debtors shall notify each Counterparty of the applicable Debtor's designation of each Open Trade Confirmation entered into with such Counterparty as either an Open Trade Confirmation that the Debtor seeks to assume or reject. See Stipulations ¶¶ 1-2. Nevertheless, the Committee's advisors were not privy to the Debtors' decision-making process with respect to the proposed treatment of the Open Trade Confirmations before the Debtors filed the Open Trades Motion.

determining the proposed treatment of the Open Trade Confirmations and therefore supports the relief requested in the Open Trades Motion.

3. The Committee also supports the Debtors' position that a Counterparty's obligation to pay the Debtors on account of assumed Open Trade Confirmations cannot be set off against damage claims arising from the Debtors' rejection of other Open Trade Confirmations with the same Counterparty. As a threshold matter, setoff is in derogation of the Bankruptcy Code's policy of equality of treatment of unsecured creditors. In addition, if such setoff were permitted here, Counterparties would effectively be given the right to purchase loans from the Debtors at a discount simply because they happen to be Counterparties to trades that the Debtors are seeking to reject. If such setoff were permissible, it might not be in the best interests of the estates to assume such Open Trade Confirmations. Under the facts and circumstances of these cases, Counterparties should not be permitted to set off obligations owing under assumed Open Trade Confirmations against their damages claims arising from rejected Open Trade Confirmations.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Committee respectfully requests that the Court grant (i) the relief requested in the Open Trades Motion, and (ii) such other relief as is just and proper.

Dated: New York, New York
December 15, 2008

MILBANK, TWEED, HADLEY & M^cCLOY LLP

By: /s/ Dennis F. Dunne

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